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STATE OF MAINE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

COMMITTEE ON JUDICIARY

TO: Senator Roger J. Katz, Senate Chair
Representative David C. Burns, House Chair
Government Oversight Committee

FROM: Senator David R. Hastings, Senate Chair *[Signature]*
Representative Joan M. Nass, House Chair *[Signature]*
Joint Standing Committee on Judiciary

DATE: March 26, 2012

RE: Review of Guardian ad litem program

Thank you for referring the concerns about supervision of and complaints about guardians ad litem to the Judiciary Committee. We take seriously our role in ensuring access to justice and supporting the needs of Maine people who rely on the courts to resolve difficult issues that are beyond their own grasp. We are especially focused on the ability of the courts to always serve the best interest of children involved in family matters litigation.

We appreciate Director Ashcroft's presentation about the complaints that have been lodged with the Office of Program Evaluation and Government Accountability, and the concerns brought forward by members of the Government Oversight Committee. Chief Justice Saufley also addressed the Judiciary Committee and expressed her frustration in the lack of resources available to create an oversight function within the Judicial Branch. She emphasized that quality is critical in the work of GALs.

Chief Justice Saufley pointed out that many people are confused by the term "guardian ad litem," which leads those unfamiliar with the statutory role of a GAL to assume that the GAL is required to serve in a caretaker, custodian, caseworker or case manager role. She explained that in state courts, GALs are investigators and witnesses in judicial proceedings. Somewhat like a lawyer, a GAL provides a voice for and on behalf of children in court proceedings and, like an expert witness, a GAL investigates and may file a report and give testimony on the result of that investigation. Some GALs are going beyond their statutory role because they are stepping into a vacuum – a child needs services and no one else is providing or facilitating provision of those services.

Chief Justice Saufley outlined the existing complaint process and recognized that it should be improved. She emphasized that neither she nor any member of the Legislature or OPEGA can intervene in a matter that is currently pending before a court. The Canons of

Judicial Conduct prohibit her involvement, and the Constitution's mandate of the Separation of Powers prevents legislators' intervention. While a case is pending, a dissatisfied party can address concerns directly to the GAL, cross-examine the GAL in proceedings and challenge the GAL's report, and appeal mistakes made by the judge. Currently, post-adjudication review is available through the Chief Judge of the District Court, although the Judicial Branch would prefer an independent board process.

Director Ashcroft directed the Judiciary Committee's attention to recommendation 4 in the OPEGA 2006 Report, Finding 7: Inadequate Screening - that the Court will consider the possibility of establishing an independent oversight board and other mechanisms for receiving feedback on GAL performance as part of an overall proposal. In her remarks to the Judiciary Committee, Chief Justice Saufleay agreed to report back to the Judiciary Committee with a plan to establish an oversight board. She identified Associate Justice Silver of the Supreme Judicial Court and Chief Judge Laverdiere of the District Court as tasked to identify potential funding for the program.

Chief Justice Saufleay pointed out that if there is interest in redefining the role of the Guardian ad litem as provided in statute, that revision should be convened by someone other than the Judicial Branch. The Legislature should determine if the broader activities - which cross into social work - should be included in the statute. If the role is expanded, the evaluation and supervision of social work activities must be undertaken by experts in that field, and not the Courts.

Director Ashcroft said that GOC is not necessarily expecting legislation from the Judiciary Committee this year. We believe that is appropriate, as trying to craft a solution this late in the Legislative Session would result in less-than-thorough consideration and flawed laws. Chief Justice Saufleay has committed to working with the various groups that are interested in this subject and submitting a report with a proposal for a complaint process by October 15, 2012 as outlined in the attached letter.

We realize that ensuring quality and effective performance of guardians ad litem is a very important function that must be supported. We appreciate your recognition of our strong interest in taking and maintaining responsibility for the legislative role in that process, and we are committed to a strong follow up.

Please let us know if you need additional information at this time, and please keep us apprised of any additional concerns.

Thank you for the opportunity to respond to your concerns, and we appreciate the ability of the committees to work collaboratively on problems that spread beyond typical jurisdictional borders.

Attachment

c: Chief Justice Leigh Saufleay
Rep. Terry Hayes



LEIGH INGALLS SAUFLEY
CHIEF JUSTICE

STATE OF MAINE
SUPREME JUDICIAL COURT

March 20, 2012

The Honorable David R. Hastings
The Honorable Joan M. Nass
Joint Standing Committee on Judiciary
c/o Legislative Information
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Dear Senator Hastings, Representative Nass, and Honorable Members of the Joint Standing Committee on Judiciary:

Thank you for the opportunity to speak with you regarding the Government Oversight Committee's Request to the Judiciary Committee relating to Guardian ad Litem oversight and complaint processes. Both Chief Judge LaVerdiere and I appreciated how quickly we could meet with you to address these issues of importance to Maine's families and children.

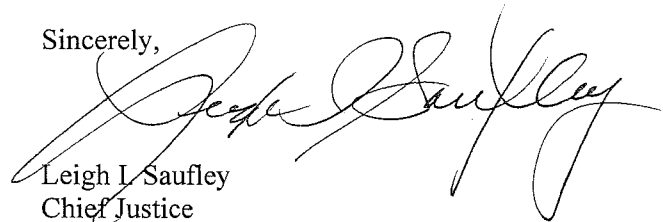
As we discussed, the primary concerns regarding GALs in Maine's State courts encompassed two very separate issues: (1) the need for a more thorough complaint process independent of the Judicial Branch, and (2) the potential for the creation of a program for support and supervision of GALs, particularly for their work in roles that go beyond investigation and testimony.

With regard to the second issue, from the Court's perspective, GALs serve in the role of investigator or specialized witness in an adjudicatory proceeding. As the neutral fact-finders, judges cannot counsel, mentor, or supervise the work of one who appears before the court as a witness. It is certainly the prerogative of the Legislature to create a program to supervise GALs, but such a program would fall within the Executive Branch of government, to ensure the continued neutrality of the court.

Regarding the Complaint process, there is a need for a professional oversight body, similar to the Board of Overseers of the Bar, or the Board of Social Work Licensure, to receive and investigate complaints against GALs. We have explored several options in recent years, none of which was achievable without substantial additional funding. As I indicated, we would be pleased to work with stakeholders, once again, to continue to explore the feasibility of a process or a professional board to receive and investigate complaints against GALs. We will report back to you with a proposal for a complaint process by October 15, 2012. This will provide time to address this, if legislation is required, in the next session of the Legislature.

Thank you, again, for your attention to this matter. We look forward to working with you to improve the quality of GAL services by developing a complaint process that will be responsive and fair to Maine families, children, and GALs.

Sincerely,



Leigh I. Saufley
Chief Justice

LIS:ajm

cc: Members of Judiciary Committee
The Honorable Terry Hayes